

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

**CWP No.7651 of 2007**  
**Date of Decision: 21.5.2007**

**Suraj Bali**

Petitioner

versus

**The Presiding Officer, Labour Court, U.T. Ambala and another**

Respondents

**CORAM:- HON'BLE MR. JUSTICE JASBIR SINGH**

**HON'BLE MRS. JUSTICE NIRMAL YADAV**

Present: Shri A.S.Jattana, Advocate for the petitioner

**Jasbir Singh, J. (Oral)**

This writ petition has been filed against the award dated 3.10.2006 (Annexure P/1), passed by the Labour Court, U.T. Chandigarh, vide which, after ordering the management, to allow the petitioner to join the service, payment of back wages was declined.

Before the Labour Court, it was proved as a matter of fact, that for not joining the duties, fault lies with the petitioner-workman. To deny back wages to him, it was observed thus:-

*“17. Now remains the question of the backwages. In the facts and circumstances of this case, this Court is of the considered opinion that there is a lapse on the part of the workman that he did not resume his duties despite offer given to by the management. Neither in the pleadings nor in the evidence the workman has alleged anywhere that he remained without job or was not gainfully employed during all this period. The law on this point has been well settled by the Hon’ble Supreme Court in the case of **Haryana State***

***Electronics Development Corporation Limited versus Mamni***

*2006(2) SCT page 647 (supra) observed as follows:-*

*“A person is not entitled to something only because it would be lawful to do so. If that principle is applied, the functions of an Industrial Court shall lose much of its significance. The changes brought about by the subsequent decisions of this Court probable having regard to the changes in the policy decisions of the government in the wake of the prevailing market economy globalization, privatization and outsourcing is evident.....It is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well settled by the various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the afore-mentioned plea but having regard to the provisions of Section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman.” [See also Haryana State Agricultural Marketing Board, Subhash Chand and another, 2006(2) SCT 23:2006 (2) SCT 794]”*

*18. The Hon’ble Supreme Court of India in the case of **State of M.P. and others S.Arjun Lal Rajak** reported as (2006) 2 Supreme Court Cases 711 has observed as follows:-*

*“It is also trite that even for grant of backwages, application of mind on the part of the Industrial Court is*

*imperative, as a relief of full back wages may not be granted automatically. In U.P. State Brassware Corpn. Ltd. Versus Uday Narain Pandey this Court opined: SCC pp 486-87, para 22) ”*

*“22. No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputedly, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act-The onus to prove that he had completed 240 days of work or he had not been gainfully employed within the said period was on the workman.”*

*19. Another citation on this point is Kendriya Vidyalaya Sanghathan and another versus S.C.Sharma reported in 2005 LLR where in the Hon’ble Supreme Court has observed as follow:-*

*“When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he materials in that regard, the employer can bring on record materials to*

*rebut the claim In the instant case, the respondent had neither pleaded no placed any material in that regard”*

*20. In view of the observation of the Hon’ble Supreme Court discussed above and the facts of this case, the workman is held to be not entitled to claim any back wages. As such the findings on both these issues are returned partly in favour of workman.”*

We feel that the findings given are justified. No case is made out for interference.

Dismissed.

**(Jasbir Singh)**  
**Judge**

**May 21, 2007**  
*gk*

**(Nirmal Yadav)**  
**Judge**